

**BEFORE THE  
COMMISSION ON LANDLORD TENANT AFFAIRS  
FOR MONTGOMERY COUNTY, MARYLAND**

In the matter of:

Francis and Tracey Chiricosta

Complainants

V.

William and Kyle Walsh

Respondents

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Case No. 32900

Rental Facility: 416 Eisner Street, Silver Spring, MD 20901 (License # 54371)

**DECISION AND ORDER**

The above captioned case having come before the Commission on Landlord-Tenant Affairs for Montgomery County, Maryland ("Commission"), pursuant to Sections 29-10, 29-14, 29-41, and 29-44 of the Montgomery County Code, 2001, as amended, and the Commission having considered the testimony and evidence of record, it is therefore, this 11<sup>th</sup> day of May, 2012, found, determined, and ordered, as follows:

**BACKGROUND**

On October 21, 2011, Francis and Tracey Chiricosta ("Complainants"), former tenants at 416 Eisner Street, Silver Spring, MD ("Property"), a licensed rental property in Montgomery County, Maryland, filed a complaint with the Office of Landlord-Tenant Affairs within the Department of Housing and Community Affairs, ("Department") in which they alleged that their former landlords, William and Kyle Walsh, owners of the Property ("Respondents") assessed unjust charges against their security deposit after the termination of their tenancy in violation of Maryland Code (1954, 2003 Repl. Vol., 2007 Suppl.), Real Property Article, Section 8-203(e)(1) ("Real Property Article").

The Complainants assert that they did not damage the Property in excess of ordinary wear and tear during their tenancy, and therefore, the Respondents had no reasonable basis to withhold any portion of their security deposit plus accrued interest.

The Respondents contend that the Complainants damaged the Property in excess of ordinary wear and tear during their tenancy, and that the amount withheld from the security deposit was for actual cost incurred to repair those damages.

The Complainants are seeking an Order from the Commission for the Respondents to refund the balance of their security deposit plus accrued interest, in the amount of \$1,769.25, a penalty of up to three times that amount based on the Respondents' unreasonable withholding; and an award for reasonable attorney's fees.

After determining that the complaint was not susceptible to conciliation, the Department referred this case to the Commission for its review, and on February 7, 2012, the Commission voted to hold a public hearing on March 22, 2012. Due to medical reasons, Respondent William Walsh, requested a continuance of the public hearing. The public hearing in the matter of Francis and Tracey Chiricosta v. William and Kyle Walsh relative to Case No. 32900 was held on April 26, 2012.

The record reflects that the Complainants and the Respondents were given proper notice of the hearing date and time. On February 9, 2012, the Complainants requested special consideration to attend the public hearing via Skype; due to Francis Chiricosta being in the military and unable to attend in person. This request was granted by the Commission. Present and sworn at the hearing and presenting evidence were the Complainant, Francis Chiricosta (via Skype), his attorney, Aindrea Conroy, the Respondent, William Walsh; and his witness, Realtor Tish Ziner.

Without objection, the Commission entered into the record the case file compiled by the Department, identified as Commission's Exhibit No. 1. The Commission also entered, without objection, into evidence the following exhibit offered by the Complainants: (1) invoice from Ned Stevens Gutter Cleaning and General Contracting, Inc. dated May 26, 2011, identified as Complainants' Exhibit No.1. The Commission also entered, without objection, into evidence the following exhibit offered by the Respondents: (1) a compilation of documents relative to the case, which included the lease, e-mails, pictures, list of damages and invoices, identified as Respondents' Exhibit No.1.

The Commission kept the record open for seven calendar days, until May 3, 2012, so the Complainants could submit: (1) pictures of the condition of the Property at time of move-in; and, (2) receipt from the US Post Office, showing date when the Notice to Vacate was mailed to the Respondents. Also, the Respondents were to submit receipts relative to the purchase of new kitchen appliances before the Complainants moved-in. On May 2, 2012, the Department received a letter with attachments from the Complainants' attorney, which included an invoice relative to fees for services rendered; which was marked as Complainants' Exhibit No.2, and forwarded to all the parties. On May 3, 2012, the Respondents submitted a letter with attachments which included the repairs/renovations performed at the Property before the Complainants moved-in, which was marked as Respondents' Exhibit No. 2, and forwarded to all the parties. The record was closed on May 3, 2012.

### **FINDINGS OF FACT**

Based on the testimony and evidence of the record, the Commission makes the following Findings of Fact:

1. On September 4, 2009, the Respondents, the Complainants and their real estate agent, Tish Ziner, signed a two year lease agreement ("Lease") for the rental of the Property, which commenced on October 1, 2009, and expired on September 30, 2011, for a monthly rent of \$2,150.00 (Commission Exhibit No. 1 – Pages 12 through 25).

2. On September 4, 2009, the Complainants paid the Respondents a security deposit, in the amount of \$2,650.00 (\$2,150.00 security deposit plus \$500.00 pet deposit) amount which is receipted in the Lease.

3. The Commission finds credible Complainant Francis Chiricosta's testimony that on June 27, 2011, he advised the Respondents that due to a job transfer (military orders) he would be vacating the Property by July 31, 2011 (Commission Exhibit No. 1 - Page 40). The Commission also finds that together with such Notice to Vacate, Complainant Francis Chiricosta attached an amended US Army Order dated June 15, 2011, indicating his transfer order with a reporting date of July 11, 2011 (Commission Exhibit No. 1 – Page 41).

4. The Commission finds that Tracey Chiricosta remained in the Property until July 31, 2011, at which time she vacated the Property, having paid rent in full through that date.

5. The Commission finds credible Complainant Francis Chiricosta's testimony that on July 31, 2011, a joint final walkthrough inspection of the Property took place, with Tracey Chiricosta and the Respondents' realtor, Tish Ziner, at which time no damages in excess of normal wear and tear were noted. There is no walkthrough report on file.

6. The Commission finds credible Complainant Francis Chiricosta's testimony that on October 7, 2011, he received Check No. 5656 issued by the Respondents with a partial refund of the security deposit plus interest, in the amount of \$1,000.00 (Commission Exhibit No. 1 – Page 32).

7. The Commission finds that on November 14, 2011, the Respondents sent an e-mail to the Complainants describing the damages assessed against their security deposit (Commission Exhibit No. 1- Page 69).

8. The Commission finds credible Respondent William Walsh's testimony that he did not send to the Complainants, at their last known address, via regular mail, within 45 days after the termination of their tenancy, a list of damages being claimed against the Complainants' security deposit together with a statement of the cost actually incurred to repair that damage.

9. The Commission finds that the Respondents failed to credit the Complainants' security deposit with the correct amount of simple interest which had accrued on their \$2,650.00 security deposit from the commencement of their tenancy, October 1, 2009, until the termination of their tenancy, July 31, 2011. The amount of accrued interest is \$119.25.

### **CONCLUSIONS OF LAW**

Accordingly, based upon a fair consideration of the testimony and evidence contained in the record, the Commission on Landlord-Tenant Affairs concludes:

1. Pursuant to Section 8-203(g)(1) and (2) of the Real Property Article, "If any portion of the security deposit is withheld, the landlord shall present by first-class mail directed to the last known address of the tenant, within 45 days after the termination of the tenancy, a written list of the damages claimed under subsection (f)(1) of this section together with a statement of the cost actually incurred"; and, "If the landlord fails to comply with this requirement, he forfeits the right to withhold any part of the security deposit for damages." The Commission concludes that the e-mail sent to the Complainants by the Respondents, on November 14, 2011 (106 days after the Complainants vacated the Property), which did not include any statement of the cost actually incurred, is not in compliance with the law and this failure constitutes a violation of Section 8-203 (g) (1) of the Real Property Article; and therefore, pursuant to Section 8-203 (g) (2) of the Real Property Article, the Respondents have forfeited the right to withhold any portion of the Complainants' security deposit for damages.

2. The Commission concludes that the Respondents' failure to pay the Complainants the right amount of interest which had accrued on their security deposit constitutes a violation of Section 8-203 (e) (1) of the Real Property, and has created a defective tenancy.

3. Although the Commission concludes that the failure by the Respondents to refund \$1,769.25 of the Complainants' security deposit plus accrued interest (\$1,650.00 plus \$119.25) was unreasonable and constitutes a violation of Section 8-203 (e)(4) of the Real Property Article, to award a penalty, as requested by the Complainants, pursuant to Section 29-47(b)(3) of the County Code, the Commission must consider the egregiousness of the Landlord's conduct in wrongfully withholding all or part of the Complainants' security deposit, whether the Landlord acted in good faith, and any prior history of wrongful withholding of a security deposit. Based on the evidence, the Commission concludes that the Respondents' conduct does not rise to the level of bad faith or egregiousness necessary to award a penalty. Therefore, Complainants' request for such an award is denied.

4. Regarding the Complainants' request for reimbursement for attorney's fees, the Commission concludes that the fees submitted by the Complainants' attorney are not reasonable in light of the amount involved in the case, the results obtained and the nature and complexity of the case. Therefore, the Complainants request for such an award is hereby denied.

### **ORDER**

In view of the foregoing, the Commission on Landlord-Tenant Affairs hereby orders that the Respondents must pay the Complainants **\$1,769.25**, which sum represents the Complainants' security deposit (\$2,650.00), plus accrued interest (\$119.25), less the amount previously refunded to the Complainants (\$1,000.00).

Commissioner Laura Murray, Commissioner Beverly Flanagan, and Commissioner David Greenstein, Panel Chairperson, unanimously concurred in the foregoing decision.

To comply with this Order, Respondents, William and Kyle Walsh, must forward to the Office of Landlord-Tenant Affairs, 100 Maryland Avenue, 4<sup>th</sup> Floor, Rockville, MD 20850, within thirty (30) calendar days of the date of this Decision and Order, a check, made payable to Francis and Tracey Chiricosta, in the amount of \$1,769.25.

The Respondents, William and Kyle Walsh, are hereby notified that Section 29-48 of the County Code declares that failure to comply with this Decision and Order is punishable by a \$500.00 civil fine Class A violation as set forth in Section 1-19 of the County Code. This civil fine may, at the discretion of the Commission, be imposed on a daily basis until there is compliance with this Decision and Order.

In addition to the issuance of a Class A civil citation and \$500.00 civil fine, should the Commission determine that the Respondents have not, within thirty (30) calendar days of the date of this Decision and Order, made a bona fide effort to comply with the terms of this Decision and Order, it may also refer the matter to the Office of the County Attorney for additional legal enforcement.

Any party aggrieved by this action of the Commission may file an administrative appeal to the Circuit Court for Montgomery County, Maryland, within thirty (30) days from the date of this Decision and Order, pursuant to the Maryland Rules governing administrative appeals. Pursuant to Section 29-49 of the County Code, should the Respondents choose to appeal the Commission's Order, they must post a bond with the Circuit Court in the amount of the award (\$1,769.25) if a stay of enforcement of this Decision and Order is sought.

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David Greenstein, Panel Chairperson  
Commission on Landlord-Tenant Affairs